



**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
889 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097**

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

**MUTUAL TERMINATION OF HARBOR LEASE NO. H-90-04 DATED
JANUARY 1, 1991, ISSUED TO HAWAII STEVEDORES, INC. AND
ISSUANCE OF A REVOCABLE PERMIT FOR A MAINTENANCE
FACILITY ON A PORTION OF THE FORMER LEASE PREMISES AT PIER
35, HONOLULU HARBOR, KAPALAMA AND IWILEI, ISLAND OF OAHU**

STATUTE: Sections 171-11, 13, 36, 55 and 61, Hawaii Revised Statutes

LESSEE: Hawaii Stevedores, Inc. ("HSI")

HARBOR LEASE NO. H-90-4:

**CHARACTER
OF USE:** Maritime Purposes, such as engaging in the operation of a maintenance facility for stevedoring equipment and its administrative offices, together with a non-exclusive easement for ingress and egress over a portion of roadway and non-exclusive subsurface easement for a sanitary sewer pipeline.

LOCATION: Adjacent to Pier 35, Honolulu Harbor, Kapalama and Iwilei, Island of Oahu, Tax Map Key: (1) 1-5-34:04 (Por) and 07 as shown on the attached Exhibit "A".

STATUS: Encumbered by Governor's Executive Order No. 1346, setting aside the land to the Harbors Division, Department of Transportation

AREA: 68,016 square feet, together with existing improvements and a non-exclusive easement for egress and ingress over a portion of roadway (16,016 square feet) and a non-exclusive easement subsurface easement for sanitary sewer pipeline (210 square feet).

ITEM M-1

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ZONING: State Land Use Commission: Urban
City and County of Honolulu: I-3 (Waterfront Industrial)

LAND TITLE
STATUS: Section 5(a) of the Hawaii Admissions Act

TERMINATION
DATE: September 30, 2011 or upon satisfaction of all terms and conditions related to the termination.

TERM: Thirty-five (35) years, commencing January 1, 1991 up to and including December 31, 2025.

ANNUAL
RENTAL: \$553,800.00

REVOCABLE PERMIT:

CHARACTER
OF USE: Stevedore Maintenance Facility.

LOCATION: Portion of former premises under Lease No. H-90-04 adjacent to Pier 35, Honolulu Harbor, Kapalama and Iwilei, Island of Oahu, Tax Map Key: (1) 1-5-34:07 as shown on the attached Exhibit "B".

AREA: 23,060 square feet, more or less.

ZONING: State Land Use Commission: Urban
City and County of Honolulu: I-3 (Waterfront Industrial)

LAND TITLE
STATUS: Section 5(a) of the Hawaii Admissions Act

EFFECTIVE
DATE: October 1, 2011 or upon termination of Harbor Lease No. H-90-04.

MONTHLY
RENT: \$0.67 per square foot per month.

REMARKS: Honolulu Harbor is the hub of the state's commercial harbor system. As the port of entry for nearly all of Hawaii's imported goods, the harbor handles more than 11 million tons of cargo annually. The New Day work plan includes developing the former Kapalama Military Reservation (KMR) into a 70 acre container yard to accommodate future cargo

demands for Hawaii. In anticipation of the build-out for the new Kapalama Container yard terminal, the University of Hawaii's School of Ocean Earth Science and Technology ("UH/SOEST") must be relocated from its KMR facility to Pier 35.

The premises under Lease No. H-90-04 to HSI has been identified as the relocation site for UH/SOEST's operations. Before UH/SOEST can move to the site, improvements must be made to the existing warehouse and open yard space to meet UH/SOEST's operational needs. The proposed improvements are currently in the design phase with construction anticipated to begin in July 2013 pending acceptance of the Environmental Impact Statement for the new terminal project. HSI has asserted that due to earlier representations by ATDC, the former development manager of the Harbors Modernization Program, that the lease premises were required sooner than 2012, their sublessees relocated their operations. HSI has asserted that the sublease revenue from these tenants was crucial to HSI's ability to meet the financial obligations under the lease and pursued the early termination of the lease. The department has countered that HSI did not obtain the State's consent to any extension of the subleases after its December 31, 2005 expiration date thereby rendering the subtenants to be illegal holdovers. Consequently, it is arguable that HSI was in breach of the Lease based on the illegal holdovers.

Despite the contrary views of issues by the parties, both parties nevertheless entered into negotiations to attempt to arrive at the framework of an agreement that would allow for the early termination of the lease in order that Harbors could begin preparation of the Pier 35 site for the relocation of UH/SOEST's operations to that site. During the negotiations, HSI has asserted that it made improvements to the state-owned building on the premises and sought compensation for the remaining book value of those improvements.

By letter dated August 28, 2011 to Mr. Philip MacDougall, General Manager of HSI, attached as Exhibit "C", the Department outlined the terms and conditions of the general parameters for a potential of agreement that would resolve all claims between Harbors and HSI relating to the early termination of the Lease, including a payment to HSI to settle any compensation claims for the remaining book value of the improvements.

HSI currently utilizes approximately 23,060 square feet, more or less, at the makai end of the lease premises as a maintenance facility. Their underground storage tanks are also located in this area. As a condition of the proposed termination agreement, a revocable permit is to be issued to

HSI to allow HSI to continue its occupancy of this area for a maintenance facility. Pursuant to the proposed agreement, Harbors Division further agreed that despite the termination of Harbor Lease No. H-90-04, the underground storage tanks within this area can remain until the revocable permit is terminated at a future date, provided that HSI shall assume all responsibility for the removal of the tanks upon termination of the revocable permit, complete restoration of the area surrounding the tanks, environmental remediation of any leaks, spills or other discharges related to the tanks, securing of appropriate environmental insurance to cover contamination, spills, leaks and the like, and fulfillment of all environmental responsibilities noted in Lease H-90-04, which terms will be incorporated into the revocable permit, including but limited to the removal the underground storage tanks associated equipment, and remediation upon termination of the revocable permit.

RECOMMENDATION:

That the Board:

- A. Consent to the mutual termination of Harbor Lease No. H-90-04, subject to the general terms and conditions discussed above and in the department's letter dated August 28, 2011 to HSI, incorporated herein by reference, and subject to the following:
 - 1. Review and approval of the final settlement agreement between Harbors and HSI by the Department of the Attorney General; and
 - 2. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.
- B. Authorize the issuance of a Revocable Permit for the stated purpose, subject to the terms and conditions outlined above and incorporated herein by reference and subject to the following:
 - 1. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time; and
 - 2. Review and approval by the Department of the Attorney General; and

3. Such other terms and conditions as may be prescribed by the Director of Transportation to best serve the interests of the State.

Respectfully submitted,



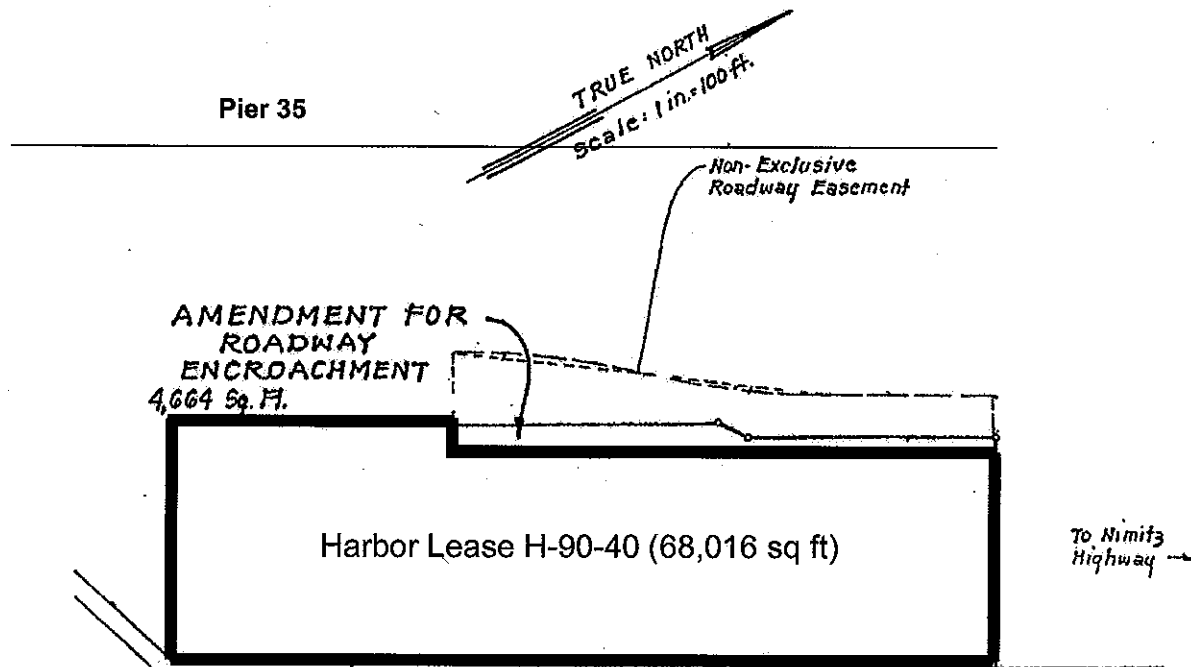
GLENN M. OKIMOTO, Ph.D.
Director of Transportation

Attachments

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson and Member
Board of Land and Natural Resources



**MAP SHOWING
AMENDMENT FOR ROADWAY ENCROACHMENT
AFFECTING A PORTION OF
GOVERNOR'S EXECUTIVE ORDER NO. 1346
at Kapalama, Honolulu, Oahu, Hawaii
Scale: 1 in. = 100 ft.**

SUMMARY OF LEASED AREA:

1. Original Lease: 72,470 Sq. Ft.
(H-90-4)
2. Sewer Easement +210 Sq. Ft.
Amendment (7-16-78)
Total = 72,680 Sq. Ft.
3. Less Area used (-) 4,664 Sq. Ft.
for Roadway
Net Leasable = 68,016 Sq. Ft.
Area

March 28, 1996
Revised August 6, 1996

Tax Map Key 1-5-34:07

EXHIBIT "A"

BAYS: A B C D E

FIRST FLOOR
1" = 40'-0"

DESCRIPTION OF IMPROVEMENTS:
FOUNDATION. Reinforced concrete spread footings. FLOOR. Concrete slab on grade. EXTERIOR WALLS. CMU (hollow tile) and metal. ROOF. Insulated metal roofing supported by Pre-Engineered, Prefabricated Rigid Frames at 20' on centers. SECOND FLOOR & STORAGE MEZZANINES. Reinforced concrete slab supported by structural steel framing.

BAYS: A B C D E

SECOND FLOOR
1" = 40'-0"

RP AREA

EXHIBIT "B"



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:

August 28, 2011

Mr. Philip MacDougall, General Manager
Hawaii Stevedores, Inc.
P.O. Box 2160
Honolulu, Hawaii 96805-2160

Dear Mr. MacDougall:

This is to acknowledge the receipt of your letters dated July 1, 2011, July 20, 2011 and August 27 2011, offering a compromise resolution to the terms relating to the termination of Harbor Lease No. 90-04 (HLN90.04).

Overall, based on our August 26, 2011 discussions, your August 27 2011 letter incorporates those discussions and details; therefore this letter serves as a confirmation of "general concept of agreement" with all items as related to the HLN90.04. We respond in the order of the items listed in your letter:

1. We are in agreement that the desire of Hawaii Stevedores Inc. (HSI) is to have the said HLN90.04 terminated by September 30 2011.
2. Maintenance Facility. Confirming agreement on rent for any continued occupancy of 23,060 square foot for maintenance purposes under a proposed revocable permit would be based on the current lease rent of \$553,800 per annum. This calculates to a rate of \$0.67 per square foot per month (psfpm), resulting in a monthly charge of \$15,450.20 for 23,060 square feet. HSI needs to confirm interest if it is HSI's intended desire to use the second floor of the maintenance facility, as that will need to be assessed for its use at the above mentioned rate and included in the new Revocable Permit (RP).
3. Utilities. We look forward to receiving HSI invoices for all utility meters servicing the premises by September 2, 2011. Again, this will be helpful when we communicate with the utilities to either terminate or restore service to the premises under our name. We also will schedule an inspection to review the location of the meters. Confirming HSI understands that the RP will include billing to HSI for any utilities consumed along with an 18% surcharge that will be assessed pursuant to our administrative rules.

EXHIBIT "C"

4. Other Space. This item is resolved.
5. Improvement Reimbursement. HSI's calculations are based on an improvement cost of \$2,460,000. This number is based on a restricted use appraisal report submitted by Robert Vernon in a 2006 lease arbitration. It was based on construction cost estimates and reviewed by the arbitrator to consider any enhancement of land value resulting from the improvements. This was its only intended purpose and the report includes the arbitrator's explicit statement that his report was not be relied upon by any third parties for any purpose whatsoever.

In an attempt to move this matter forward, we confirm that we are willing to make a significant concession in accepting the use of \$2,460,000 as the cost of construction incurred by the lessee. HSI has confirmed that the methodology for further calculations to determine the remaining book value of the improvements shall be calculated as per the attachment provided at the August 26 2011 meeting. We have provided the attachment to this letter. Please note that in the course of continued and cooperative dialogue on resolving all items within the HLN90.04, we provided calculations previously to show the effect if a proposed lease termination date of August 31, 2011 is used. We have not revised the calculations to reflect a September 30, 2011 date.

As also discussed and acknowledged in your August 27, 2011 letter, we are complying with Generally Accepted Accounting Principles ("GAAP") that prescribe that the leasehold improvements should be amortized using the lower of the estimated useful life of the improvements or the remaining life of the fixed lease term. The value of leasehold improvements is the actual cost incurred to construct such improvements as prescribed by GAAP and the use of replacement costs is not proper accounting. In this situation, the remaining life of the lease term should be used and our calculations result in a remaining life of fourteen (14) years and four (4) months. This results in a remaining book value of \$1,209,360.42. Again, as a result of our continued and cooperative dialogue on this item, our example of payout to HSI was predicated on a lease termination date of August 31, 2011, which date occurs before the expiration of the remaining lease term, the amount to be paid should be based on the net present value of the remaining book value as well as an adjusted date for September 30, 2011. Therefore results in a lease buyout settlement of \$758,120.94 will have to be revised.

Further, HSI is reminded of its obligation for unpaid rents owed on Revocable Permit No. 2694 in the amount of \$236,325.60 which will be netted against any payout due to HSI under the foregoing example.

HSI agrees that once the final payment amount is determined, we will render the final payment to HSI. HSI acknowledges that payment will be processed after all required administrative approvals to allot funds for this purpose are received.

6. No interest is due HSI.
7. We are in agreement with the underground storage tanks to remain in place despite the termination of the lease; however, HSI shall assume all responsibilities for environmental remediation, etc. and has agreed to the lease language into the RP. (Language will be included in any termination agreement along with additional requirements such as insurance, etc.)
8. HSI understands that termination will not be effected until an inspection by our staff is completed and confirms that the premises are in satisfactory condition with the exception of the removal of the underground tanks. This includes the leveling off of the floor, the removal of the concrete blocks, filling of the hole and removal of the reefer materials as well as any other items required under the HLN90.04. Copies of the current inspection just completed within the last week as also provided to you at our meetings is attached.
9. Should any of HSI's subtenants express interest in future renting of spaces in the current location, they can contact our staff after terms of the current HLN90.04 is completed. No assurance can be provided at this time as to our plans for any of the proposed returned premises. We are confirming that HLN90.04 is between our office and HSI. Therefore, HSI is responsible to ensure all of its subtenants issues are met in order to meet the September 30, 2011 proposed termination lease.

Mr. Philip MacDougall
August 28, 2011
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Additionally, HSI holds Revocable Permits Nos. H-92-1794 and H-04-2466 adjacent to the lease premises. As a significant portion of the lease premises is proposed for return to our office, we confirm that HSI is in agreement that it would be in both parties best interest if it relinquished the revocable permit for RP No. H-04-2466, the parking area Ewa of the building. This Revocable Permit No. H-04-2466 shall be targeted for termination on September 30, 2011 as well; pending site inspection by our office for conformance to the terms of the permit.

As agreed, it is important for HSI to understand that this "concept of general agreement" is predicated on all of the aforementioned requirements being met. Should any one of these requirements not be met, the lease shall not be terminated and HSI will continue to be charged its currently monthly fee.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jadine Urasaki", with a stylized flourish at the end.

JADINE URASAKI, P.E., LEED AP
Deputy Director – Projects

Attachment

